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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/785,198

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Thomas Birkhoelzer

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11/23/2010

HARNESS, DICKEY & PIERCE, P.L.C.

P.O. BOX 8910

RESTON, VA 20195

EXAMINER

HOANG, DANIEL L

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/785,198	<b>Applicant(s)</b> BIRKHOELZER ET AL.	
	<b>Examiner</b> DANIEL L. HOANG	<b>Art Unit</b> 2436	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22,25,27-34,36,40,41 and 43-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22,25,27-34,36,40,41 and 43-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **Detailed Action**

### ***Response to Arguments***

Applicant's arguments filed 6/22/10 have been fully considered but they are not persuasive.

Applicant argues the following:

a) Khidekel does not perform a security check to ascertain the identity of a user upon each access operation and therefore cannot assign any signature on the basis of the performed security check. Applicant further argues that Khidekel can eliminate the need for the user to authenticate with the server each time he wishes to access information on the secure server and therefore equates this to mean that Khidekel teaches away from performing a security check on each access operation.

In response to a), examiner respectfully disagrees. Examiner maintains his stance that the validation of the timestamp information shows that a security check is performed upon each access operation. Assuming for sake of argument that Khidekel does not teach this limitation, applicant's specification specifically cites that at paragraph 10, "another advantage is that the method requires just one security check from the user, but otherwise takes place fundamentally unnoticed by the users, and is therefore particularly easy and noncomplex to handle."

b) Khidekel does not teach signing each access operation to electronic data.

In response to b), examiner respectfully disagrees. Khidekel teaches at paragraph 41, maintaining records of each authentication, an audit trail and non-repudiation can be provided. it is further taught that each attempt to access or perform actions on stored secure files requires approval by the authentication server. Thus each attempt to access or perform actions on the file are validated and access operations are recorded. this keeps an audit trail of which files were accessed by whom and what actions were performed on them.

c) Applicant argues that examiner has confused authorizing access with signing access operations.

In response to c) examiner respectfully disagrees. While Khidekel does indeed authorize access, it is explained above that Khidekel also maintains a record of each access operation and keeps track of not only who accessed what and when it was accessed, Khidekel further teaches that a log is kept of what action was taken on the file being accessed. Examiner believes this covers all of which is currently claimed by applicant. Furthermore, it is possible that applicant's arguments do not fall in line with the specification since it is specifically cited that only one security check is performed.

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-8, 40-41, and 43-46 are not statutory as they are drawn as a whole to an abstract idea. A review of the factors outlined in the July 27, 2010 policy memo and OG Notice, indicates that these claims are not statutory. These claims fail the machine or transformation test as the steps of a, b and c could be performed in one's mind or manually and involve only the general concept covering both known and unknown uses of the concept covered, and can be performed through any existing or future-devised machinery or even without any apparatus.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 9 and 29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described

in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Said claims recite the limitation, "performing a security check upon each access operation." Applicant's specification does not show this and further cites that only one security check is performed. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-22, 25, 27-34, 36, 40-41, 43-46 are rejected under 35

U.S.C. 103(a) as being unpatentable over Khidekel (US PGP No. 20010027527)

and further in view of Ballantyne (US Patent No. 5867821).

#### **As per claims 1, 9, 16, 29 and 40, Khidekel teaches:**

A method for signing access operations to electronic data, comprising:

performing a security check upon each access operation in order to ascertain the identity of a user;

*[see paragraph 0029] "The user can be authenticated based on the user's credentials" [see paragraph 35, wherein upon receiving the token, the secure server validates the token by comparing the difference between the current time and the authentication time to the predefined threshold to make sure a duration of time has not expired. It is clear from this that each access operation must be logged and a security check performed because if each access is not logged, there would be an error in the duration of time since the last access operation that was not logged.*

assigning a user signature, identifying the user, on the basis of the performed security check without being viewable by the user;

*[see paragraph 0034] "Token"*

assigning at least one role signature, each role signature being assignable to a plurality of users, on the basis of the performed security check without being viewable by the user; and

*[see paragraph 0039] "... business rules that indicate which users are authorized to take various types of actions..."*

signing each access operation to electronic data by specifying the user signature and the role signature; and

*[see paragraph 0034-0035]*

**The Khidekel reference is mute in teaching the following limitations:**

recording each access operation and the user signature and the at least one role signature specified for each access operation.

*[see col. 8, lines 54-64, wherein all user accesses are documented.] it would have been obvious to one of ordinary skill in the art to modify the Khidekel reference to include this limitation taught by Ballantyne so that patients can request logs of who accessed their logs and when.]*

wherein each access operation is recorded in an audit memory, the user signature is recorded in the audit memory, and the at least one role signature is recorded in the audit memory.

For the above limitations, examiner relies upon the Ballantyne reference. Ballantyne teaches at col. 8, lines 1-64, auditing user accesses to all the archived electronic health records contained in the master library (ML). Examiner views the identification number as analogous to the claimed user signature and the personal electronic profile as containing information analogous to the claimed role signature. Ballantyne teaches logging of all user actions as well as recording user accesses by ID numbers and accompanying user profiles. It would have been obvious to one of ordinary skill in the art to modify the Khidekel reference to include archiving of access operations in an audit memory as taught by Ballantyne in order to automate data collection and reduce manual collection and storage of user information. This in turn would create a more efficient and effective system.

**As per claims 2, 10, and 30, Khidekel teaches:**

The method as claimed in claim 1, wherein the security check involves biometric data from the user being ascertained.

*[see paragraph 0029]*

**As per claims 3, 11, 17, and 31, Khidekel teaches:**

The method as claimed in claim 1, wherein the security check involves reading at least one of an electronic and mechanical key.

*[see paragraph 0029, "smartcard"]*

**As per claims 4, 12, 18, 19, 25, and 32, Khidekel teaches:**

The method as claimed in claim 1, wherein the user signature to be assigned is ascertainable on the basis of the data ascertained in the security check, by checking a user signature memory.

*[see paragraph 0026, "database 24"]*

**As per claims 5, 13, 20, 21, 27, and 33, Khidekel teaches:**

The method as claimed in claim 1, wherein the role signature to be assigned is ascertainable on the basis of the data ascertained in the security check, by checking a role signature memory.

*[see paragraph 0026, "database 24"]*

**As per claims 6, 14, 22, 28, 34, Khidekel teaches:**

The method as claimed in claim 4, wherein the user signature memory is checked using a data telecommunication link.

*[see paragraph 0028, "communications can be sent over a secure socket layer"]*

**As per claim 7, Khidekel teaches:**

The method as claimed in claim 1, wherein one user is assignable a plurality of role signatures simultaneously.

*[see paragraph 0039, wherein specified physicians may be permitted to view patient records as well as modify them while administrative staff may only view patient records]*

**As per claims 8, 15, and 36, Khidekel teaches:**

The method as claimed in claim 1, wherein the data are medically relevant, wherein the users are medical specialist personnel, and wherein the roles are formed in line with the workgroups within the medical specialist personnel.

*[see paragraph 0025]*

**As per claim 41, Khidekel teaches:**

The method as claimed in claim 40, wherein an access operation can be reconstructed by specifying at least one of the user's former and current role signatures.

*[see paragraph 41, resubmit credentials for re-authentication.]*

**As per claims 43-46, Ballantyne teaches:**

The method as claimed in claim 1, wherein the user signature memory and the role signature memory are maintained independently from the audit memory.

*[see col. 15, lines 40-67, and col. 16, lines 1-13]*

**POINTS OF CONTACT**

- \*. Any response to this Office Action should be **faxed to** (571) 273-8300 **or mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Hand-delivered responses** should be brought to

Customer Service Window  
Randolph Building  
401 Dulaney Street  
Alexandria, VA 22314

- \*. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel L. Hoang whose telephone number is 571-270-1019. The examiner can normally be reached on Monday - Thursday, 8:00 a.m. - 5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Moazzami can be reached on 571-272-4195. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Daniel L. Hoang/  
Examiner, Art Unit 2436

/Nasser G Moazzami/  
Supervisory Patent Examiner, Art Unit 2436